

1 STATE OF NEW JERSEY
2 DEPARTMENT OF COMMUNITY AFFAIRS
3 NEW JERSEY PRIVACY STUDY COMMISSION

4 _____
5 In the matter of: Transcript of
6 Public Interest Subcommittee Proceedings
7 Meeting

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10 Computer-aided transcript of hearing
11 taken stenographically in the above-entitled
12 matter before KAREN L. DeLUCIA, a Certified
13 Shorthand Reporter and Notary Public of the
14 State of New Jersey, at Ewing Municipal
15 Building, 2 Jake Gario Drive, Ewing, NJ, on
16 Thursday, November 6, 2003, commencing at 4:00
17 p.m.

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GUY J. RENZI & ASSOCIATES

1 A P P E A R A N C E S:

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4 SUBCOMMITTEE MEMBERS:

5 JUDGE ROSEMARY KARCHER-REAVEY, Chair

6 GRAYSON BARBER

7 WILLIAM KEARNS

8 H. LAWRENCE WILSON, JR.

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10

11 ALSO PRESENT:

12 JEAN JANUKOWICZ

13 CATHERINE STARGHILL, ESQ.

14 Department of Community Affairs

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1 I N D E X

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3 SPEAKER PAGE

4 STEPHEN PHILLIPS 6

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1 JUDGE KARCHER-REAVEY: Good
2 afternoon. This public hearing is hosted by
3 the Public Interest Subcommittee of the New
4 Jersey Privacy Study Commission. The Privacy
5 Study Commission was created under the Open
6 Public Records Act, which is NJS 47:1a-1 and
7 the following: The study for privacy issues
8 raised by the collection, processing, use and
9 dissemination of information by a public
10 agency.

11 I'm the chair of that Subcommittee,
12 and that's why I'm opening the hearing today.

13 At this hearing we're inviting the
14 public to comment specifically on the Special
15 Directive Subcommittee's draft report on Home
16 Address and Telephone Numbers in Government
17 Records. The public is also invited to comment
18 on the general privacy issues raised by the
19 collection, processing, use and dissemination
20 of information by public agencies.

21 The Special Directive report
22 response to Governor's executive order 26 in
23 which he directed the New Jersey Privacy Study
24 Commission to study the issue of whether and to
25 what extent the home address and home telephone

1 numbers of citizens should be made publicly
2 available by public agencies.

3 This Subcommittee has prepared a
4 brief statement of its recommendations in
5 summary form for the public to consider when
6 making its comments. The handouts are located
7 in the back of the room. I think the people
8 who are here found them. The complete draft
9 report may be reviewed and downloaded from the
10 Commission's web site.

11 All public comments made today are
12 going to be recorded by the stenographer we
13 have here and considered by the entire
14 Commission as part of its study of the issues.
15 We're having it in different parts of the State
16 so that different areas can be heard from, but
17 the Commission will consider all of them.

18 Each individual and organization
19 may make comments. Please don't exceed five
20 minutes. Representatives of organizations with
21 prepared statements please fill out a form
22 identifying yourself and provide a copy of the
23 prepared statement, if possible. And that form
24 is also located in the back of the room.

25 We'd like you to tell us your name

1 and address before you give your comment, if
2 you don't mind doing that. And if you prefer
3 to remain anonymous, you certainly can do that,
4 as well. We would like to know if you
5 represent an organization. Thank you.

6 Did either one of you want to be
7 heard, or are you going to think about it?

8 MR. PHILLIPS: I'll volunteer.

9 JUDGE KARCHER-REAVEY: Please keep
10 your voice up; we don't seem to have any
11 microphones.

12 MR. PHILLIPS: My name is Stephen
13 Phillips. And I'm the president of Charles
14 Jones, LLC located in Trenton, New Jersey.

15 I presented comments before the
16 Privacy Study Commission on October 17. And in
17 response to requests made at that time, I did
18 bring with me today a copy of my outline that I
19 used during our presentation. So that was one
20 of the things I wanted to accomplish today.

21 JUDGE KARCHER-REAVEY: Thank you.

22 MR. PHILLIPS: And I can give it to
23 you.

24 JUDGE KARCHER-REAVEY: If you can
25 give it to Cathy, she'll hang on to it and not

1 lose it.

2 MR. PHILLIPS: And I thought I'd
3 also take the opportunity to share some
4 findings I had based on a seminar I attended in
5 Phoenix, Arizona. This was an annual meeting
6 of the American Land Title Association who is
7 also studying the issue of public records
8 versus personal privacy. And I thought I would
9 share some of the comments made during one of
10 the seminars. It was conducted by Ann Vom
11 Eigen, who is the legislative counsel for the
12 American Title Association; and one of the
13 speakers in the seminar was Mark Ladd, who is
14 the County Clerk for the Racine County.

15 And they opened the seminar by
16 saying the prevailing policy is that the public
17 has a right to know, and that open records are
18 considered fundamental element in government,
19 but they recognize that privacy rights now
20 compete with the rights of public access and
21 the expectation of openness. And that they see
22 that this is more of an issue today than it was
23 ten years ago that electronic access and the
24 digital age has made this a more compelling
25 issue.

1 They commented that Wisconsin has
2 one of the most liberal open public records
3 laws, which has put them in the square of this
4 controversy, or issue. And that they have
5 found that budget constraints have made one of
6 the arguments for publishing information
7 electronically, that the clerks are finding
8 that it's cheaper for them to make information
9 available in electronic form than in
10 traditional ways. And that's one of the
11 reasons the clerks are seeking to make
12 information more information open and
13 available.

14 JUDGE KARCHER-REAVEY: I'm sorry to
15 interrupt, but were they specific about what
16 kind of information they were dealing with? I
17 mean, are we talking addresses, telephone
18 numbers, or other information, as well?

19 MR. PHILLIPS: They were making
20 property records available, and that was the
21 center of their conversation. They
22 particularly talked about home addresses and
23 Social Security numbers. And it was their
24 recommendation that there perhaps should be
25 some constraints on Social Security numbers in

1 public documents. However, they believe that
2 addresses are important to be available,
3 particularly for the real estate industry.

4 And one of the challenges that they
5 have seen is that they have heard comment
6 about, or ideas about redacting home addresses
7 and identifying information from public
8 records. And they made a very strong point
9 about the difficulty of redacting such
10 information, particularly from historical
11 records. And one of the points they made,
12 which I hadn't considered, is how do you redact
13 property information, or selected fields of
14 information from microfilm records that are in
15 part of historical archives, and have been
16 traditionally made available to the public who
17 come in and want the ability to research old
18 property records. And I thought that that was
19 an interesting point. Because that shows how
20 difficult it is. It may be simple to say, yes,
21 we should redact some fields of information
22 from the public records, but what they pointed
23 out was the practical challenge of doing that,
24 particularly things like microfilm.

25 They also mentioned some helpful

1 web sites, which I could forward to the
2 Committee in an email. One was the FTC
3 apparently has a nice web site; and then
4 there's an organization called
5 privacyrights.org. And that the credit bureaus
6 each have on their web sites good information
7 about public access versus rights of privacy.

8 So those were just some comments I
9 can share with this committee based on other
10 seminars and information I've attended.

11 I also, if I could have a few more
12 minutes.

13 JUDGE KARCHER-REAVEY: Sure.

14 MR. PHILLIPS: Comment specifically
15 on a few of the items in the draft Committee
16 report expanding beyond what I've mentioned
17 before.

18 And the report mentions on page six
19 that the commonly most frequently received
20 argument by the Commission in opposition to the
21 disclosure of home address and home telephone
22 numbers may be stated as follows, and I quote:
23 When I give my home address to the government,
24 I don't want the government to give it to
25 anyone else, end quote.

1 And I guess my point there is that
2 certainly for some types of records, such as
3 deeds and mortgages, perhaps liens and
4 judgments, that I believe there's no such
5 expectation of privacy, and that it's a public
6 document by its nature. And that these
7 documents provide constructive notice of
8 ownership and mortgage liens and things that
9 are necessary for the real estate industry.
10 And that as for judges and other liens, I do
11 not believe that is expectation for privacy
12 because they are intended by virtue of their
13 filing as a public document to alert other
14 creditors as to prior claims. And I think that
15 a judgment debtor somehow may forego their
16 rights when the lien filed. And they certainly
17 can avoid the filing by paying off the lien.

18 I mentioned about in my seminar
19 about the difficulty in redacting home
20 addresses and other information from the
21 records. And I note that there was some
22 support or comment about that on page 14 of the
23 Committee's report. And that the New Jersey
24 Freedom of Government --

25 MS. BARBER: Page 13.

1 MR. PHILLIPS: Yes, right, page
2 13. For example, to redact home address would
3 make it difficult to determine if Mary Williams
4 who contributed \$1,000 in the county sheriff
5 election is the same Mary Williams that billed
6 the sheriff's department for \$10,000 in
7 consulting fees. And that to ban the
8 disclosure of home addresses would impair the
9 ability of news media to investigate. So they
10 have comment on that, and here it is on the top
11 of page 14. To redact home addresses from
12 public records is labor intensive and cost in
13 proposition as I mentioned particularly with
14 where there is microfilm involved.

15 And I note on page 21 that the
16 Committee does recognize that the special
17 directive committee notes that if applied to
18 current and historical records, it is option of
19 redacting information would be very burdensome
20 for a records custodian, and I agree with
21 that.

22 And third I would like to encourage
23 the committee to proceed in making
24 recommendations, and not simply to pass the
25 ball along to the legislature. I think that

1 this Committee is comprised of some great minds
2 and talent. And I think that this Committee
3 studied the issue, perhaps more exhaustively
4 than the legislative have, and I would hope the
5 Committee would make good constructive
6 recommendations to the legislature.

7 So those are my comments.

8 JUDGE KARCHER-REAVEY: I think
9 ultimately we hope to be able to do that, make
10 recommendations at least to the Governor and to
11 the legislature.

12 Any questions?

13 MS. BARBER: Yes, if you don't
14 mind.

15 Are your comments limited to
16 government records that pertain to real estate
17 and documents that would be relevant to title
18 searches?

19 MR. PHILLIPS: In particular yes,
20 but in general no. I think what I'm concerned
21 about is, for example, on page 39 of the
22 Committee report, you mention that the
23 legislature should consider several factors to
24 determine if home addresses should be exempt in
25 the type of records and the degree of need of

1 access. And certainly I think that there's a
2 very high degree of need of access for real
3 estate records and real property records.

4 But, you know, I think we're just
5 suggesting that the Committee should be
6 cautious in what records should be restricted.

7 MS. BARBER: What do you think of
8 the decision by the New Hampshire Supreme Court
9 in the case that is usually referred to as the
10 Amy Boyer case, in which a stalker murdered Amy
11 Boyer, having received information from an
12 outfit called DocuSearch. And the New
13 Hampshire Supreme Court held, and I'm
14 paraphrasing here, I probably don't have the
15 standard quite right, but held essentially that
16 a search company, like DocuSearch, would have a
17 duty of care to individuals like Amy Boyer.
18 And I think from there I think the case went
19 back; I think it got remanded.

20 But there's an issue that the State
21 of New Hampshire is now recognized that in
22 these databases there is a potential for abuse,
23 and that the entity responsible for how
24 information is disclosed may actually have a
25 duty of care toward the individuals whose data

1 is in the database.

2 Are you familiar with that case,
3 and would you have comments on it?

4 MR. PHILLIPS: No, I'm not familiar
5 with the case. But I do believe that there is
6 some duty of care incumbent upon providers of
7 this information. I know that Superior
8 Information Services who testified at the same
9 time that I did mentioned that they have
10 subscriber agreements with all of their
11 customers. And I think that that's not unique
12 in the industry to have some form of subscriber
13 agreement with those people who are obtaining
14 information.

15 MS. BARBER: Do you think that the
16 government's duty of care would be comparable
17 to a commercial entity's duty of care for an
18 individual?

19 MR. PHILLIPS: That's a good
20 question. I'd like to think about that.

21 MS. BARBER: I'd love to hear back
22 from you, if you have any thoughts to share.
23 If you have a pencil I'll give you the name of
24 the Amy Boyer case.

25 MR. PHILLIPS: Okay.

1 MS. BARBER: The plaintiff's name
2 is Rembsberg, R-e-m-s, and it's either b-e-r-g
3 or b-u-r-g, but it's Remsberg. It's a case out
4 of the New Hampshire Supreme Court about a year
5 ago. I recommend it to you. It's interesting
6 reading.

7 JUDGE KARCHER-REAVEY: I don't mean
8 to interrupt, but that didn't really have to do
9 with title searching; he wanted her address.

10 MS. BARBER: It has to do with the
11 duty of care. And I think that one of the
12 arguments that is made in the draft report of
13 the Special Directive Subcommittee is that the
14 government has a particular duty of care to
15 citizens who disclose information about
16 themselves to the government. And the draft
17 report makes the argument that this duty of
18 care is informed by constitutional law and
19 other precedence on the treatment of home
20 addresses. So it's one of the interests that
21 goes into weighing how personal information
22 should be treated.

23 JUDGE KARCHER-REAVEY: But in the
24 title searching area it's much more the
25 property address rather than the home address

1 that they need to have to search. It wouldn't
2 necessarily be a home address; it could be, but
3 it might not be.

4 MS. BARBER: Yes, I think that's
5 right.

6 JUDGE KARCHER-REAVEY: Did you want
7 to add anything?

8 MR. PHILLIPS: No, unless there's
9 any other questions?

10 JUDGE KARCHER-REAVEY: Thank you
11 very much.

12 We'll wait until we have somebody
13 who wishes to make a comment. We'll be off the
14 record.

15 (Whereupon, a recess was taken from
16 4:20 to 7:00 p.m.)

17 JUDGE KARCHER-REAVEY: We're going
18 on the record. We want to thank you all for
19 coming. I'm sorry there wasn't a larger public
20 turnout, but we'll hope for better next week
21 because now that the elections are over, maybe
22 the public will become involved.

23 Thank you. We're off the record.

24 (Whereupon, the meeting was
25 concluded at 7:00 p.m.)

1 C E R T I F I C A T E

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7 I, KAREN L. DeLUCIA, License No. XI01888,

8 a Certified Shorthand Reporter and Notary

9 Public of the State of New Jersey, do hereby

10 certify the foregoing to be a true and accurate

11 transcript of my original stenographic notes

12 taken at the time and place hereinbefore set

13 forth.

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Karen L. DeLucia, CSR

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22 Dated: November 24, 2003

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